No. 09-1085

In The Supreme Court of the United States

STATE OF LOUISIANA,

Petitioner,

v.

JERRY GOZA AND GLADYS P. GOZA,

Respondents.

On Petition For Writ Of Certiorari To The State Of Louisiana First Circuit Court Of Appeal

BRIEF FOR THE RESPONDENTS IN OPPOSITION

PAUL R. BAIER
4222 Hyacinth Avenue
Baton Rouge, LA 70808
(225) 344-9815
Counsel of Record
paul.baier@law.lsu.edu

MICHAEL C. PALMINTIER
DEGRAVELLES, PALMINTIER, HOLTHAUS & FRUGÉ
618 Main Street
Baton Rouge, LA 70801
(225) 344-3735

Counsel for Respondents

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QUESTION PRESENTED

Whether the Louisiana First Circuit Court of Appeal correctly applied this Court's holding in *Pierce County, Washington* v. *Guillen*, 537 U.S. 129 (2003), in affirming admission of accident reports obtained from the West Baton Rouge Parish Sheriff's Office in litigation against the Louisiana Department of Transportation and Development over the DOTD's claim of privilege under 23 U.S.C. § 409.

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Highway Safety Act of 1973, *as amended*, 23 U.S.C. § 101, *et seq.*:

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MISCELLANEOUS:

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BRIEF FOR THE RESPONDENTS IN OPPOSITION

OPINIONS BELOW

The opinion of the Louisiana First Circuit Court of Appeal is reported at 21 So. 3d 320 (La. App. 1 Cir. 5/5/09) (Pet. App. 1a), *writ denied*, 23 So. 3d 919 (La. 12/11/09) (Pet. App. 50a).

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1257(a).

STATEMENT

Jerry and Gladys Goza sued the Louisiana Department of Transportation and Development in tort for personal injuries suffered as a result of an automobile accident. The Department, relying on 23 U.S.C. § 409, moved *in limine* to exclude accident reports obtained from the West Baton Rouge Parish Sheriff's Office. The trial court denied the Department's motion; the reports were admitted; the jury returned a verdict in favor of the Gozas. The First Circuit Court of Appeal affirmed, holding that 23 U.S.C. § 409 was inapplicable since the accident reports were prepared by law enforcement officials pursuant to their duty to compile accident reports and not pursuant to the statutory objectives of the

National Highway Safety Act, 23 U.S.C. § 152. (Pet. App. 6a-7a).

ARGUMENT

I. THE FIRST CIRCUIT COURT OF APPEAL PROPERLY APPLIED THIS COURT'S HOLDING IN *PIERCE COUNTY, WASHINGTON* v. *GUILLEN*.

In *Pierce County* v. *Guillen*, 537 U.S. 129 (2003), this Court rejected the overblown interpretation of 23 U.S.C. § 409 that the Louisiana Department of Transportation and Development urged in the trial court and in the Court of Appeal below. The same sweeping interpretation of § 409 is heatedly re-urged in the State's petition here. But to no avail, we submit.

Quite the contrary, in *Pierce County* this Court adopted the United States Government's interpretation of 409 which, "takes a narrower view of the privilege by making it inapplicable to information compiled or collected for purposes unrelated to § 152 and held by agencies that are not pursuing § 152 objectives. We therefore adopt this interpretation." 537 U.S., at 145-146.

The United States Government's brief in *Pierce County* v. *Guillen* stressed the very distinction drawn by the trial court and the Louisiana First Court of Appeal below, *viz.*: —

> Thus, for example, if discovery were sought from a county or a county sheriff's office seeking all reports that the sheriff's office had received or generated about accidents at a certain location within a certain number of years, and if the sheriff's office had received or generated those reports for routine law enforcement purposes, a court should not conclude that the sheriff's office had either "compiled or collected" those reports for Section 152-related purposes. That would be true even if copies of those accident reports already had been, or were later, transmitted to the state highway department or country planning agency, which intended to use them for its own Section 152-related purposes.

U.S. Gov. Brief, *Pierce County*, at 31.

Or, as this Court stated in *Pierce County*: —

> Put differently, there is no reason to interpret § 409 as prohibiting the disclosure of information compiled or collected for purposes unrelated to § 152, held by government agencies not involved in administering § 152, if, before § 152 was adopted plaintiffs would have been free to obtain such information from those very agencies.

537 U.S., at 146.

CONCLUSION

This Court should reject petitioner's effort to clothe § 409 with new formulary garb. The petition for certiorari should be denied.

Respectfully submitted,

PAUL R. BAIER
4222 Hyacinth Avenue
Baton Rouge, LA 70808
(225) 344-9815
Counsel of Record

MICHAEL C. PALMINTIER
deGRAVELLES, PALMINTIER,
HOLTHAUS & FRUGÉ
618 Main Street
Baton Rouge, LA 70801
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